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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,516	11/10/2000	Gerald R. Koefelda	RPC-0485-PUS	5124
33171	7590	08/06/2004	EXAMINER	
KONSTANTINE J. DIAMOND 4010 E. 26TH STREET LOS ANGELES, CA 90023			CASTELLANO, STEPHEN J	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 08/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/710,516

Applicant(s)

KOEFLDA ET AL.

Examiner

Stephen J. Castellano

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17, 19-21, 23-26 and 29-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17, 19-21, 23-26 and 29-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 3727

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 7-13, 15, 17, 19, 25, 26 and 29-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Sauey.

Sauey discloses a crate capable of holding a beverage container, the beverage container having a lower portion and a central label area, the crate comprising a unitary bottom panel, first and second pairs of opposing side walls and a divider assembly having longitudinal and transverse divider members (dividers) and a plurality of low profile standoff portions (standoffs), each of the standoffs having a container contact surface spaced from the corresponding dividers .

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauey in view of Koefeldt.

Sauey discloses the invention except for the hinged lid. Koefeldt teaches a hinged lid with a lid (bottle cap) capture area sized to receive an upper portion of a respective container (bottle) for aligning the container (bottle). It would have been obvious to provide the hinged lid with a lid capture area in order to properly align the items within the crate to keep the items

Art Unit: 3727

covered, in alignment with each other so that adjacent items do not impact or rub each other and to prevent top damage from occurring to the items.

Claims 4, 6, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauey in view of Koefeldt and Apps ('814)(Apps).

Sauey discloses the invention except for the hinged lid. Koefeldt teaches a hinged lid with a lid (bottle cap) capture area sized to receive an upper portion of a respective container (bottle) for aligning the container (bottle). Apps teaches a lid with an outer surface with projections, the projections provide inside surface recesses for the upper portion of bottles stored therein and the projections are received in the crate bottom recesses of a identical crate stacked thereabove. It would have been obvious to provide the hinged lid with lid capture areas (recesses) and for the outer surfaces of the lid capture areas to form projections which are received in the recesses of a crate bottom stacked thereabove in order to properly align the items within the crate in to keep the items covered thereby reducing contamination and deterioration from light, in alignment with each other so that adjacent items do not impact or rub each other and to prevent top damage from occurring to the items.

Claims 1-3, 5, 7-13, 15, 17, 19, 25, 26 and 29-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps in view of Sauey and Hepp.

Apps discloses the crate including the divider assembly having dividers (dividing walls 116, 216) and standoff portions (standoffs) (formed by support areas 122 with a raised circular rib, a longitudinal rib and a transverse rib). Apps discloses the invention except the standoffs being generally transverse to the upper surface of the bottom panel. Sauey and Hepp disclose standoffs which are generally transverse to the upper surface of the bottom panel and Sauey

Art Unit: 3727

discloses a standoff being substantially shorter than the dividers. It would have been obvious to replace the standoffs of Apps or add additional standoffs as taught by Sauey and Hepp to provide a more effective securement or to further secure the position of the items stored in the crate as the Sauey and Hepp standoffs provide a more stable securement by engaging several parts of the sidewall of the items to be stored which resists transverse movement of the sidewall better than engaging the end wall.

Claims 1-5, 7-15, 17, 19, 20, 23-26 and 29-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gale in view of Apps, Sauey and Hepp.

Gale discloses a crate for holding a beverage container, the crate comprising a unitary bottom panel (minor flaps 21, 22 and inserts 81, 82) having an upper surface (the upper surfaces of both inserts), sidewalls (SIDE 1, SIDE 2, END 1 and END 2) and a divider assembly having a plurality of divider members (formed by portions of the upper surface of inserts 81 and 82 located outside of and extending between the major wells (91) and the upwardly extending sidewall portions of the wells) attached to the upper surface of the bottom panel and extending longitudinally and transversely in the compartment area to define at least one container receiving area for receiving the beverage container therein, the divider assembly including a plurality of low profile standoff portions (cylindrical rib 96) having a container contact surface (inside surface, outside surface or upper edge surface) spaced from corresponding divider members, the standoff portions extending inwardly into the at least one container receiving area for engaging the lower portion of the container to provide stability thereto and for maintaining the corresponding beverage container in a spaced relationship from the divider members.

Art Unit: 3727

The minor flaps 21 and 22 are secured to the inserts 81 and 82, respectively (see column 4, lines 24 and 25) and the minor flaps 21 and 22 are indirectly secured to each other by being attached to the sidewalls by fold lines 46, 47 (see column 3, lines 43-46). The bottom panel is unitary. The bottom panel and the first and second pairs of side walls form a unitary construction.

Gale discloses the invention except for the bottom panel, sidewalls and divider assembly being integrally molded as one piece. Apps, Sauey and Hepp disclose integrally molded as one piece structures including the bottom panel, sidewalls and divider assembly. It would have been obvious to modify the construction to be integrally molded as one piece in order to save manufacturing costs associated with the assembly of separate parts and to eliminate the misplacement of parts.

Re claims 5 and 15, the insert 81 has recesses (opposite rib 98, see Fig. 7), each recess is capable of receiving a projection.

Re claim 10, the container receiving area can be more than a single bottle receiving area and can include four bottle receiving areas, so four standoffs extend within at least one container receiving area.

Re claim 24, Gale doesn't disclose a lid projection and receiving area. Apps teaches a lid projection and receiving area. It would have been obvious to add the lid projection and receiving area to provide stability to a vertically stacked array of crates to prevent toppling of the stack.

Claims 20 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps in view of Gale, Koefeldt, Sauey and Hepp.

Apps discloses the invention except for the hinged lid. Gale and Koefeldt teach hinged lids. It would have been obvious to add a hinge to the lid to keep the lid attached so that it doesn't become separated from the crate and to provide an alignment feature for the recesses on the underside of the lid to keep the items stored within the crate properly aligned to prevent damage from rubbing or damage to the top of the item stored.

In addition, Sauey and Hepp disclose standoffs which are generally transverse to the upper surface of the bottom panel and Sauey discloses a standoff being substantially shorter than the dividers. It would have been obvious to replace the standoffs of Apps or add additional standoffs as taught by Sauey and Hepp to provide a more effective securement or to further secure the position of the items stored in the crate as the Sauey and Hepp standoffs provide a more stable securement by engaging several parts of the sidewall of the items to be stored which resists transverse movement of the sidewall better than engaging the end wall.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over [Apps in view of Gale, Sauey and Hepp] or [Gale in view of Apps, Sauey and Hepp] as applied to claim 20 above, and further in view of Jamison.

The combinations discloses the invention except for the lid lock. Jamison teaches a lid lock. It would have been obvious to lock the lid to prevent unauthorized access to the contents of the crate.

Applicant's arguments filed April 29, 2004 have been fully considered but they are not persuasive. Applicant states that the protuberances in Sauey are not low profile. The word "low" is a relative term. Applicant doesn't specifically claim a reference profile by stating that the profile is lower than a bottle, the crate or less than a percentage of a certain reference profile.

The written specification is not believed to state any such reference profile. Therefore, insofar as the profile of the protuberance is lower than the height of bottles capable of being situated therein, the height of shells, or the height of the crate or box, then Sauey's protuberances are low profile.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Art Unit: 3727

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc